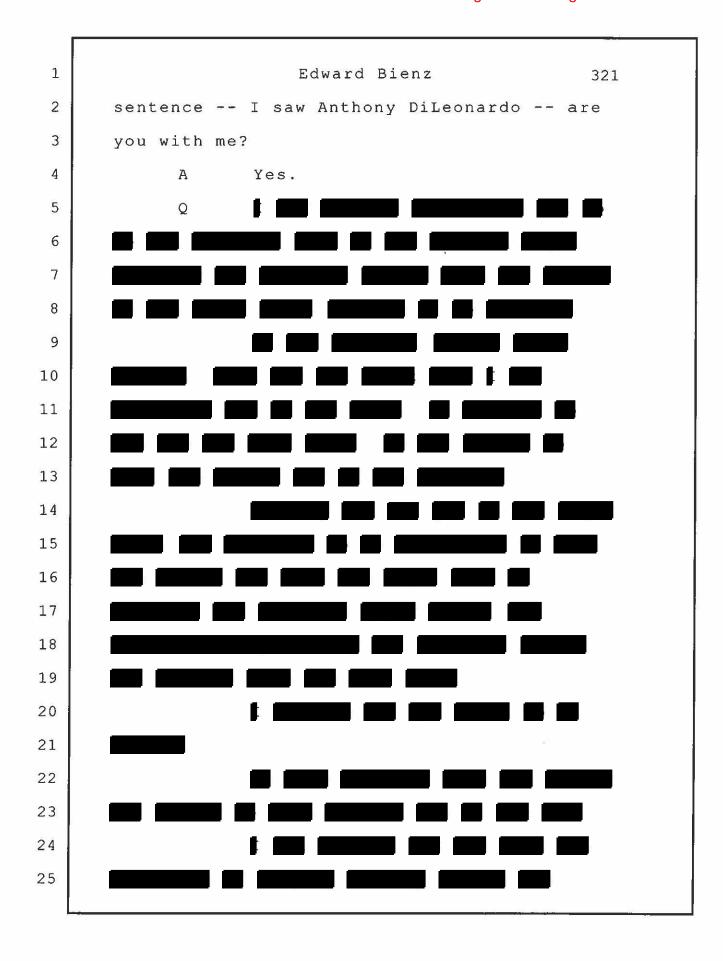
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1
                        Edward Bienz
                                                    316
 2
                    You don't recall?
 3
             A
                    I don't remember if there was an
 4
       obstruction or not.
 5
                    Could you see him with a clear
 6
       and un obstructed view?
 7
                    I don't know if there was an
       obstruction.
 8
 9
                    Well, an obstruction -- if
10
       you're looking through two sheets of glass,
11
       I don't know that there's an obstruction.
12
                    Could you see him without any
13
       obstruction blocking you?
14
             A
                    I could see him running.
15
             0
                    So you saw his back?
16
             A
                    Yes.
17
                    By the way, up to this point in
             Q
18
       time, Sophie Cornea; where is she?
19
                    I don't know.
             A
20
                    Did you ever see her out of the
             0
21
       car?
22
                    Not until after.
             A
23
             Q
                    So, at least until the shots are
24
       fired, your recollection, Sophie is still in
25
       the car?
```

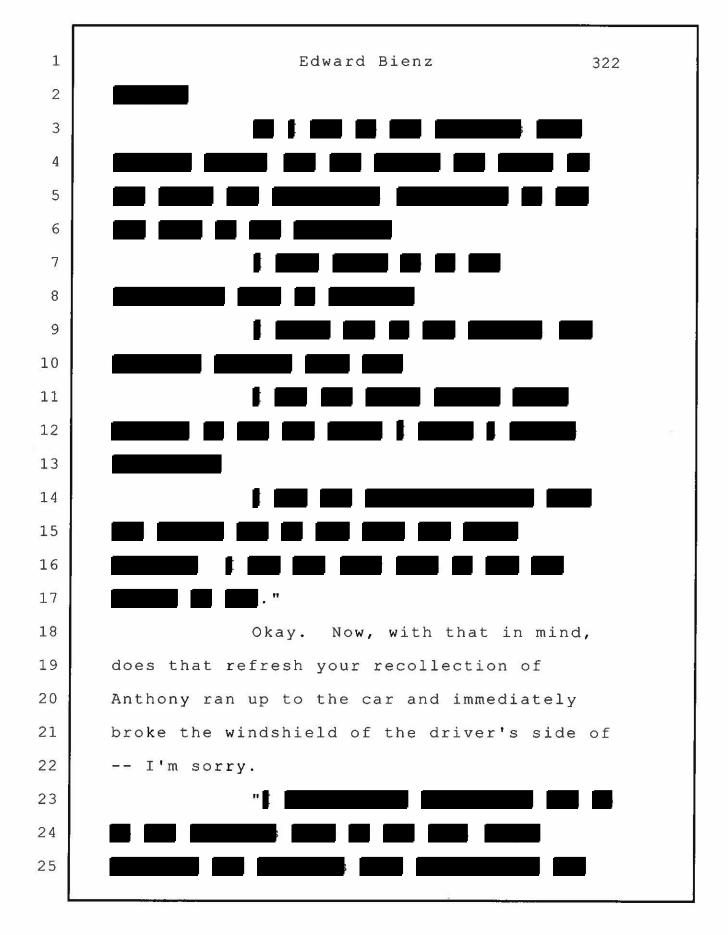
1	1 Edwar	d Bienz	317
2	2 A I don't k	now where she	is.
3	Q When you	left Huntingto	n, she
4	4 was in the, I'm assumi	ng, front pas	senger
5	5 seat?		
6	6 A I don't k	now at what po	int she
7	7 exited the vehicle.		
8	Q You didn'	t see her outs	ide when
9	you were speaking to y	our wife, did	you?
10	O A No.		
11	1 Q Where did	you see Antho	n y
12	2 running to?		
13	3 A To the dr	iver's door.	
14	Q The drive	r's door of wh	at?
15	5 A Of the co	npact car.	
16	Q The white	compact car i	s where,
17	7 in relation to Anthony	's car?	
18	MR. CLARK	E: At what po	int? At
19	9 the point he's r	unning towards	it?
20	MR. GRAND	NETTE: Yeah.	
21	1 A The vehic	le traveled 15	to 20
22	feet closer.		٠
23	Q How many	car lengths be	hind the
24	4 white car is this whit	e compact car	>
25	MR. SCHRO	EDER: At what	point?

1	Edward Bienz 318
2	Objection.
3	MR. GRANDINETTE: At the time
4	Anthony's running toward it.
5	A Approximately two car lengths.
6	Q Can I ask you, for purposes of
7	this question you came to learn that this
8	white compact was a cab, right?
9	A Yes.
10	Q Is it all right if I refer to it
11	as the cab, from here on in?
12	A Yes.
13	Q So we understand each other.
14	How long did it take for you to
15	run the two car lengths to the cab?
16	A With quick. A few seconds.
17	Q Once again, I apologize.
18	Is it two seconds?
19	MR. MITCHELL: He said two
20	seconds.
21	·
22	MR. CLARKE: I thought he said
23	two.
24	Did you not hear him trying to
25	clarify?

1	Edward Bienz 319
2	MR. GRANDINETTE: I believe his
3	two seconds was an estimate.
4	MR. MITCHELL: Okay.
5	Then you said three.
6	MR. GRANDINETTE: I said two or
7	three.
8	MR. MITCHELL: I thought his
9	answer was two. It was pretty clear.
10	Q So, two seconds?
11	A Approximately, for me to run.
12	Q He runs over to the car quickly.
13	What portion of the car do you
14	see him run to?
15	A Driver's door.
16	Q When he gets to the driver's
17	door, what, if anything, do you observe?
18	A He ended up in a physical
19	altercation with the operator of the car.
20	Q Could you please describe for me
21	the physical altercation that you observed?
22	A He ended up getting the door
23	open. At some point he had broken the
24	window and they were wrestling.
25	Interior of the car, Anthony was

```
Edward Bienz
 1
                                                   320
 2
       kind of reaching in the car, the operator
       was trying to push him out. They were
 3
 4
       fighting with an open door over the handgun.
 5
             Q
                    When he reached the car, did the
       altercation occur immediately?
 6
 7
                    Yes.
 8
             0
                    Did Anthony break the window
       first or did the door open first?
 9
                    I don't know.
10
             Α
11
                    Prior to Anthony wrestling with
12
       the individual, did he say anything?
13
                   Not that I recall.
14
             O.
                    Do you recall him saying that
15
      you're under arrest, or words to that
16
       effect?
17
                   At some point during the
18
      altercation, he did say, you're under
19
       arrest.
20
                   You don't remember exactly when?
            0
21
            A
                   No.
22
                   Let me just read to you from
23
      paragraph nine of your statement to IAB.
24
                    It says, I -- and I'm going
25
      to start it -- I think it's the second
```





1 Edward Bienz 323 2 3 4 5 Does that refresh your recollection of whether or not he shattered 6 7 the window prior to opening the door? Yes. 8 A 9 Up to that point in time, did Q you, sir, observe any conduct committed by 10 11 this other individual that would have 12 warranted an arrest? 13 MR. MITCHELL: Objection to the 14 form. 15 MR. SCHROEDER: Objection to the 16 form. MR. CLARKE: Objection to form. 17 18 Can you repeat the question. A 19 Q Sure. 20 Did you observe any conduct that 21 would have warranted an arrest? 22 A No. 23 MR. SCHROEDER: Objection. 24 So there was nothing that you Q 25 saw, nothing that you heard, that would

```
1
                        Edward Bienz
                                                    324
 2
       warrant an arrest of the driver of that car,
 3
       correct?
 4
                    MR. SCHROEDER: At what point?
 5
                    MR. GRANDINETTE:
                                       The point
 6
             where he smashed the window and
 7
             said --
 8
                    MR. SCHROEDER: I know that.
 9
                    Objection.
10
             Α
                    No.
11
                    Now, you said that after he
12
       smashed the window, you saw the gun in his
13
       hand.
14
                    Is that the first time you saw
15
      the gun in Anthony's hand?
16
                    Yes.
17
                    And when you saw the gun in his
18
      hand, you also indicated in your statement
19
      that you thought that the gun was loaded,
20
      right, still had ammunition in it?
21
             Α
                    Yes.
22
                    Did you know what kind of gun it
23
      was, whether it was a 38, a 9-millimeter,
24
      what it was?
25
            A
                    No.
```

1	Edward Bienz 325
2	Q Now a nine can hold an awful lot
3	of rounds, right?
4	MR. MITCHELL: Objection to
5	form.
6	Q Based upon your experience, how
7	many round can a 9-millimeter hold?
8	A Depends.
9	Q Give me an estimate.
10	There's different size clips go
11	into a 9?
12	A Magazine, yes.
13	Q Give me an average.
14	A 15 to 16.
15	Q Obviously, if it's a
16	9-millimeter, we have a potential for having
17	what, 12, 13 more rounds of live ammunition
18	in that gun, right?
19	A Yes.
20	Q If it's a 38, how many rounds
21	does a 38 hold?
22	A It could be five or six.
23	Q So it could be potentially two,
24	three more rounds, right?
25	A Yes.

1 Edward Bienz 326 2 What you said here was that you 3 were concerned that Anthony's gun may be loaded, he is wrestling with this individual 4 5 in the car, right? 6 His right-hand is in the car 7 with the gun, and grabbing with the same 8 hand, the torso of this individual, right? 9 A Yes. 10 Q How far were you away from him 11 at the time that you made this observation? 12 I don't know. A 13 Near the rear of my vehicle. 14 Q How long until, you know, you 15 saw him run over to the car, until the point 16 in time that you made this observation? 17 If is it took him two seconds to 18 get to the car, how much time went by before 19 he smashes the window, opens the door, and 20 his hand is in the car, wrestling with the 21 driver? 22 Two seconds, three seconds. A 23 How long until you then move, as Q 24 described in this statement, towards the 25 car?

Edward Bienz 1 327 2 It took a few seconds. I had to Α 3 figure out what was going on. What is a few seconds? 4 0 5 A Five, six seconds, maybe seven. 6 Did you reach a conclusion in 7 your mind at that point, prior to heading over to the car, what you perceived was 8 9 going on? 10 Α Yes. 11 What was that? 12 Α The two guys were involved in a 13 physical alteration. I believed that the 14 gun was still live, or loaded with 15 ammunition. 16 Did that then present a danger 17 to yourself or others? 18 A Yes. 19 Did you know point at that point 20 in time that there was another individual in 21 the passenger seat? 22 Α No. 23 Up to this point in time, has 24 anybody else said anything, other than 25 Anthony DiLeonardo said, you're under

1	Edward Bienz 328
2	arrest?
3	A Not that I heard.
4	Q How many times did he say it?
5	A I don't know.
6	Q There's nothing in the statement
7	that says Anthony DiLeonardo said Nassau
8	County Police, you're under arrest, right;
9	it just says, you're under arrest?
10	A That's all I heard.
11	Q You never heard Anthony
12	DiLeonardo identify himself as a police
13	officer, up to this point in time, right?
14	MR. MITCHELL: Objection to the
15	form.
16	A I didn't hear.
17	Q Now, I'm assuming that you were
18	gravely concerned about the health and
19	well-being of your wife, right?
20	MR. SCHROEDER: Objection to
21	form.
22	A In what say it again.
23	Q It would be fair to say that you
24	would be gravely concerned about your wife,
25	under these circumstances?

Edward Bienz 1 329 2 A Yes. 3 Did you, prior to running over 0 4 to the car, ever instruct your wife to do 5 anything: Take cover, get in the car, get down, don't move; anything? 6 7 Α No. 8 After the seven seconds or so it 9 took you to assess the situation in your 10 mind, what do you do? 11 I started running over to the 12 car. 13 Your intended purpose as you run 0 14 over to the car, as I understand it, was to 15 secure that weapon, correct? 16 To secure is that weapon and 17 stop whatever is going on between the two of 18 them. 19 It wasn't to go over and assist 20 Anthony DiLeonardo in effectuating an 21 arrest, was it? 22 MR. CLARKE: Objection. 23 A I didn't know what was going on. 24 So then would it be fair to say, 0 25 as you ran over there at that point in time,

1	Edward Bienz 330
2	you didn't go over there to help effectuate
3	an arrest by Anthony DiLeonardo?
4	MR. MITCHELL: Object to the
5	form.
6	A No.
7	Q You were going over there to
8	stop these two men who were engaged in a
9	physical encounter which you perceived to be
10	extremely dangerous, given the gun?
11	A Yes.
12	Q The situation in your mind, now
13	after your assessment, the situation is out
14	of hand, right?
15	MR. SCHROEDER: Objection.
16	MR. CLARKE: Objection.
17	Q Fair to say?
18	A Dangerous, would be the way I
19	would characterize it.
20	Q Extremely dangerous?
21	A Yes.
22	Q So you head over there with the
23	intent
24	By the way, let me ask you this.
25	You run over, and before you can

1 Edward Bienz 331 2 do anything, the cab starts going backwards? 3 Yes. 4 0 As the cab now is retreating 5 further backwards in a southerly direction 6 down Oakwood Road, a portion of that car, as 7 you described here, clips your body? A Yes. 8 9 MR. SCHROEDER: When you can 10 take a break, I got to respond to 11 something. 12 Judge Tomlinson, I don't know 13 how to do it. 14 MR. GRANDINETTE: Give me a 15 minute. 16 Can you tell me, sir, which 17 portion of that car clipped what portion of 18 your body? 19 Front driver's quarter panel, in the center of the vehicle. 20 21 The front -- is it before --22 between the tire and the front bumper, or 23 the tire and the front door, if you know? 24 Can you delineate that? 25 Closer to the front of it. A

Edward Bienz 1 332 2 Closer to the front bumper of 3 the vehicle? A Yes. 4 5 When you're running towards the Q 6 car, you're glued on that gun, and what's 7 going on -- the changes? 8 A Yes. 9 0 I think at one point you describe the driver of the tax, as trying to 10 11 push DiLeonardo out of the car, right? 12 A Yes. 13 So at least during the entire 14 observation you had of these two 15 individuals, you never saw the taxicab 16 driver ever hit or strike Anthony 17 DiLeonardo, right? 18 A It was a physical altercation. 19 They were like pushing and shoving on each 20 other. 21 Did you ever see him throw a 22 punch at Anthony DiLeonardo? 23 A No. 24 You saw him trying to get him 25 out of the car, right?

1 Edward Bienz 333 2 Α Yes. 3 Q Anthony DiLeonardo was the guy that broke the window and was trying to get 4 5 in the car? Yes. 6 A 7 When you're running up to this 8 car, watching the gun and the exchange, is 9 it fair to say that the driver of the car 10 was looking at Anthony, trying to get him out of his car? 11 12 MR. SCHROEDER: Objection. 13 A Yes. He wasn't looking at you, was 14 Q 15 he? 16 A No. 17 When he backed up and went to Q 18 get away, do you have any idea that he even 19 knew that you were anywhere near his car? 20 MR. CLARKE: Objection. 21 A I don't know if he knew I was 22 there. 23 Would it be fair to say, based 24 upon your observations, that you were 25 inadvertently, as a result of the motorist

1	Edward Bienz 334
2	moving his car in an attempt to get away
3	from Anthony DiLeonardo?
4	MR. MITCHELL: Objection.
5	A I don't know.
6	Q Was it your perception, when
7	that cab went backwards, it was trying to
8	retreat from Anthony DiLeonardo?
1793	
9	MR. MITCHELL: Objection.
10	MR. CLARKE: Objection.
11	A I don't know. I don't know what
12	his intention was.
13	Q The car didn't move forward to
14	hit you, did it?
15	A It was a sweeping, reversing
16	motion.
17	Q It went backwards, right?
18	A Yes.
19	Q He didn't steer his car
20	strategically into you, did he?
21	MR. CLARKE: Objection. Calls
22	for speculation of what his intent
23	was.
24	Q Sir, did he steer that cab into
25	your body?

1	Edward Bienz 335
2	MR. MITCHELL: Object to the
3	form.
4	A I don't know.
5	MR. CLARKE: Let's take a break.
6	MR. GRANDINETTE: Can I finish
7	this line of questioning? I have a
8	couple more minutes.
9	If not, it's okay. If you want
10	to break, here we can.
11	MR. CLARKE: Let's take a break.
12	I've got five hours, on the
13	nose.
14	(Brief recess)
15	Q Sir, I'm going to read to you
16	from Anthony to the the Internal Affairs
17	Unit statement of Anthony DiLeonardo dated
18	March 17, 2012, okay, in relation to the
19	fact that we just discussed.
20	MR. SCHROEDER: I missed the
21	beginning. You're going to
22	MR. GRANDINETTE: I'm going to
23	read it from it.
24	Plaintiff'S 50, paragraph number
25	38.

1 Edward Bienz 336 2 3 4 5 6 7 8 So, according to you, the 9 distance where these cars came to rest 10 is about right, right? I think you 11 described as being 15 to 20 feet? 12 He said 20-25 feet. 13 MR. SCHROEDER: Objection. 14 MR. CLARKE: Objection to the 15 form of the question. 16 You can answer, over objection. 17 Α Restate the question. 18 Sure. Q 19 At least as to the distance that 20 the vehicle was from Mr. DiLeonardo, when it 21 was stopped 20 to 25 feet away, it's close 22 to what you estimated, right? 23 Α Yes. 24 Q The part about the shield, I 25 know that you said you never saw that

1 Edward Bienz 337 2 shield, right? 3 Α Yes. 4 Q Next paragraph, 39, 5 6 7 Don't move. 8 9 10 11 12 13 So, according to your account, you never saw or heard Anthony DiLeonardo 14 15 standing at the side of the car, stating, 16 17 correct? 18 MR. MITCHELL: I object to the 19 form. 20 MR. CLARKE: Object to the form, 21 to the extent that part of that, he 22 acknowledged already. 23 That statement, given by Anthony 24 DiLeonardo to IAU, is not consistent with 25 your observations, right?

1	Edward Bienz 338
2	MR. SCHROEDER: Objection.
3	MR. MITCHELL: Objection.
4	MR. CLARKE: Over objection,
5	you can answer.
6	A I heard him saying, "You are
7	under arrest."
8	Q After he broke the window.
9	You said he ran than up to the
10	car, two seconds, smashed the window, opened
11	the door and was saying, "You're under
12	arrest"?
13	MR. SCHROEDER: Objection.
14	A Say again.
15	Q Do you recall, just a couple of
16	minutes ago, I asked you that
17	You, in other words, heard
18	Anthony DiLeonardo say identify himself
19	as a police officer, and stated that to
20	Thomas Moroughan that he was under arrest,
21	prior to breaking the window?
22	MR. SCHROEDER: Is that wasn't
23	the question.
24	MR. CLARKE: Objection to the
25	form. You're misstating his

1 Edward Bienz 339 2 testimony. 3 Do you recall that? 4 An hour ago, or what happened at 5 the roadside? 6 In his statement of Paragraph 7 39, when Anthony DiLeonardo stated that he 8 pulled his shield out, drew his gun, stated, 9 10 that never happened, according to your knowledge, right? 11 12 MR. MITCHELL: Objection. 13 MR. CLARKE: Objection to the 14 form of the question. 15 I didn't see that. Α 16 Next, I was --17 MR. CLARKE: What are you 18 referencing? 19 MR. GRANDINETTE: ' Paragraph 40. 20 MR. CLARKE: Not before 21 anybody --22 MR. GRANDINETTE: Plaintiff's 23 50. I'm reading. Period. Paragraph 24 40. 25

1	Edward Bienz 340
2	
3	
4	. "
5	Now based upon your observation,
6	that's inaccurate statement?
7	MR. MITCHELL: I object to the
8	form.
9	MR. CLARKE: Object.
10	Q Correct?
11	A No.
12	Q No, meaning it's not an accurate
13	statement?
14	MR. SCHROEDER: Objection.
15	THE WITNESS: I never testified
16	to seeing any injuries.
17	Q This is Anthony DiLeonardo's
18	statement to the Internal Affairs Unit.
19	MR. CLARKE: Hold on a second.
20	MR. GRANDINETTE: At Paragraph
21	40.
22	MR. CLARKE: Stop.
23	He is thinking your question is
24	about his statement.
25	This is where it's too late in

1	Edward Bienz 341
2	the day, we're too tired.
3	I'm going to call a night. Time
4	to call it a night.
5	MR. GRANDINETTE: I'm going to
6	move on.
7	MR. CLARKE: Your questions are
8	complicated when you're wide awake.
9	Candidly, seven or eight hours of you
10	will kill anybody.
11	We got to call it a night.
12	MR. GRANDINETTE: I would like
13	to at least finish this area of
14	questioning.
15	MR. CLARKE: I'm sure.
16	That could take you four hours.
17	MR. GRANDINETTE: Chris, it
18	won't take me four hours.
19	MR. CLARKE: Mr. Grandinette,
20	you did four hours on the DWI stop.
21	It could take you a long time.
22	It could take a lot longer,
23	given the complexity of the questions
24	and the stamina of my client.
25	MR. GRANDINETTE: I don't see

1	Edward Bienz 342
2	how difficult the question is, and I'm
3	trying to be cooperative.
4	MR. CLARKE: They're inside out.
5	MR. GRANDINETTE: With all due
6	respect, I don't think there's
7	anything inside out about asking about
8	whether or not the statement by the
9	man shot, he was
10	MR. MITCHELL: It's actually
11	totally and purely irrelevant.
12	MR. GRANDINETTE: It's
13	permitted, it's admitted.
14	MR. MITCHELL: I don't know how
15	it leads to further discovery.
16	Quite frankly, his opinion of
17	what
18	MR. GRANDINETTE: Really.
19	Off the record.
20	MR. CLARKE: We have five
21	minutes.
22	MR. GRANDINETTE: Note my
23	objection to breaking at this time.
24	There's nothing I can do about it.
25	I thought we had an agreement

1 Edward Bienz 343 2 that we were going --3 MR. CLARKE: We did. Obviously 4 the questions are getting complicated, 5 the witness is tired. 6 Can you continue tonight? 7 THE WITNESS: No. 8 MR. GRANDINETTE: Gentleman, 9 call the judge to ask her to move 10 forward, based upon mutual respect 11 that we have for each other. 12 I will defer to Mr. Bienz. 13 MR. MITCHELL: I want to mention 14 that -- great. 15 I want to mention for the record 16 that I agree with Mr. Clarke that my 17 simple observations of his client, 18 just me looking at him, was that he 19 indeed was confused about your last 20 question. 21 My perception of Mr. Clarke's 22 client was that he thought you were 23 reading from his own statement. 24 I agree with Mr. Clarke. 25 MR. GRANDINETTE: Okay.

Edward Bienz 1 344 2 Let me ask him now. 3 MR. CLARKE: We're done. 4 MR. GRANDINETTE: May I state --5 MR. CLARKE: Those five minutes don't count. 6 7 Let's keep it at five hours 8 straight. 9 My colleague, Mr. Mitchell, is 10 going to write a status report to 11 Judge Tomlinson, let her know that 12 we're going to reconvene on Monday, 13 the 7th, here. 14 Mr. Grandinette will let us know 15 starting time, and I'll speak to the 16 department to get you freed up for 17 that. 18 MR. SCHROEDER: Off the record. 19 (Time noted: 5:40 p.m.) 20 21 22 23 24 25

1 Edward Bienz 345 2 ACKNOWLEDGEMENT 3 4 STATE OF NEW YORK : \$ \$ 5 COUNTY OF 6 7 8 I, EDWARD BIENZ, hereby certify 9 that I have read the transcript of my 10 testimony taken under oath in my deposition 11 of December 2, 2015; that the transcript is 12 a true, complete and correct record of my 13 testimony, and that the answers on the 14 record as given by me are true and correct. 15 16 17 18 19 EDWARD BIENZ 20 21 22 Signed and subscribed to before me, this day 23 of , 2015. 24 Notary Public, State of New York 25

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2	I N D E X				
3	WITNESS EXAMINATION BY PAGE				
4	EDWARD BIENZ MR. GRANDINETTE 6				
5					
6					
7	DIRECTIONS: None				
8	RULINGS: None				
9	MOTIONS: None				
10					
11	DOCUMENT REQUEST				
12	None				
13					
14	INFORMATION TO BE FURNISHED				
15	None				
16					
17	EXHIBITS				
18	PLAINTIFF'S FOR I.D. PAGE				
19	120 Second Amended Complaint 7				
20	121 Nassau County Police Department 98				
21	Standards of Conduct				
22	122 Photo 241				
23	45A Nassau County Police Department 129				
24	Internal Correspondence, 3/13/12				
25	123 Photo 304				

		
1		347
2	124 Photo	308
3	58A Mr. Grandinette time chart (2 pages)	
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5	DEFENDANT'S FOR I.D.	PAGE
6	None	
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1 348 2 CERTIFICATE 3 STATE OF NEW YORK 4) ss.: 5 COUNTY OF NASSAU 6 7 I, RICH MOFFETT, a Notary Public 8 within and for the State of New York, 9 do hereby certify: 10 That EDWARD BIENZ, the witness 11 whose deposition is hereinbefore set 12 forth, was duly sworn by me and that 13 such deposition is a true record of the testimony given by such witness. 14 15 I further certify that I am not 16 related to any of the parties to this 17 action by blood or marriage; and that I am in no way interested in the outcome 18 19 of this matter. 20 IN WITNESS WHEREOF, I have 21 hereunto set my hand this 2nd day of 22 December, 2015. 23 RICH MOFFET 24 25

'06 [1] - 92:8 '07 [1] - 93:11 'Police [1] - 337:7

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[1] - 204:24 [4] - 51:17, 57:8, 113:21 [1] - 57:9

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